HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.543 of 2007

Between:

Deputy Tahsildar, Khammam,
Khammam District and others

… Appellants

And

M/s.Bhargavi Traders, Khammam
Rep. by its Proprietor Kodumuri Jagadish

… Respondent

Counsel for the appellants: Shri C.V. Mohan Reddy,
Advocate General
Assisted by Shri J. Sudheer,
Special Government Pleader

Counsel for the respondent: Shri V. Srinivas

::JUDGMENT::

July 31, 2007

Per G.S. Singhvi, CJ

This appeal by Deputy Tahsildar, Khammam and two others is

directed against order dated 27.4.2007 passed by the learned Single Judge in Review WPMP No.9015 of 2007.

Respondent – M/s. Bhargavi Traders filed Writ Petition No.3761 of 2007 for striking down G.O.Ms.No.64, Consumer Affairs, Food and Civil Supplies Department, dated 23.9.2006 whereby the provisions of the Andhra Pradesh Scheduled Commodities (Licensing and Distribution) Order, 1982 were revived. The other prayer made by the respondent was to quash the seizure of the stocks of Redgram and Greengram weighing 1247.47 and 93.06 quintals respectively from the godowns and not to take action in furtherance of proceedings dated 17.2.2007. By an order dated 27.2.2007, the learned Single Judge rejected the respondent's challenge to the validity of G.O.Ms.No.64, dated 23.9.2006 and declared that the 1982 Order is propio vigore revitalized by the said G.O. The learned Single Judge also upheld the seizure of commodities, but quashed sale notification dated 22.3.2007 issued by the Collector. The operative part of the order of the learned Single Judge reads as under:

"For all the aforesaid reasons this court;

(a) Rejects the petitioner's challenge to the validity of G.O.Ms.No.64 dated 23.9.2006;

(b) Declares that the 1982 Control Order is *propio vigore* revitalized by the issuance of the order in G.O.Ms.No.64 dated 23.09.2003 and for the period for which it is revived;

(c) Declares the seizure of the specified commodities by proceedings of the 1st respondent dated 17.2.2007 is valid and proper; and

(d) Declares that the order of sale by the notification dated 24.2.2007 is invalid as the Collector or the appropriate competent authority failed to arrive at and record the requisite, opinion contrary to the mandate of Sec.6A(2). It is however declared that it is open to the

appropriate and competent authority including the Collector (in conformity with the observations and analyses in this judgment), to proceed from the stage of forming the appropriate opinion and recording it in a verifiable manner and to thereafter proceed to act in accordance with the decision arrived at on the basis of such opinion."

The respondent applied for review of the aforementioned order by filing Review WPMP No.9015 of 2007. Similar review petitions were filed by the petitioners of the connected writ petitions, which too had been dismissed by the learned Single Judge.

The Government of Andhra Pradesh also filed WPMP Nos. 8318 and 8319 of 2007 in Writ Petition No.5539 of 2007 for review of order dated 22.3.2007.

By the order under challenge, the learned Single Judge allowed the review petitions filed by the State Government and modified the common interim order dated 22.3.2007 passed in Writ Petition No.5539 of 2007 and batch, but admitted Review WPMP No.9015 of 2007 in Writ Petition No.3761 of 2007. The relevant portions of the order of the learned Single Judge read as under:

"For the aforesaid reasons prima facie G.O.64 is unsustainable and would not revive the 1982 Control Order.

On the analysis above, this Court is prima facie of the view that G.O.Ms.No.64, Consumer Affairs, Food and Civil Supplies Department, dated 23.9.2006 would not revive the Andhra Pradesh Scheduled Commodities, Control (Licensing and Distribution) Order, 1982. Therefore, the very seizure of the commodities of pulses on allegations of violation of the Andhra Pradesh Scheduled Commodities Control (Licensing and Distribution) Order, 1982 is invalid and patently incompetent. Consequently, no orders (for interim disposal) under Sec.6A (2) of the Essential Commodities Act, 1955 could be passed. However, since this is only a prima facie view and at an interlocutory stage, this court is not inclined to direct release forthwith of all the seized commodities in favour

and to the persons/agents from whom the pulses were seized. This process shall await the final disposal of the writ petitions.

This court has recorded its analysis and conclusions on the various challenges to the order in G.O.Ms.No.14, Consumer Affairs, Food and Civil Supplies (C.S.I) Department, 14.03.2007, since these were argued. As G.O.Ms.No.64 is found inoperative and incapable of effectuating the Andhra Pradesh Scheduled Commodities Control (Licensing and Distribution) Order, 1982, the orders in G.O.No.14 would be unenforceable.

Having regard to the variety and complexity of the issues presented on the questions as to the validity of G.O.Ms.Nos.64 and 14, this court considers it appropriate to record only prima facie and interim findings at this stage. A comprehensive view could be taken at the final hearing of the several writ petitions.

On the aforesaid analysis, WPMP No.9015 of 2007 in W.P.No.3761 of 2007 is admitted for consideration. The WPMP Nos.8319, 8317, 8315, 8323, 8331, 8321, 8325, 8515, 8313, 9513, 8311, 8327, 8511, 8333 and 8329 of 2007 in W.P.Nos.5539, 5653, 5662, 5689, 5691, 5694, 5752, 5761, 5762, 5770, 5794, 5810, 5825, 5844 and 5846 of 2007 respectively – the review petitions filed by the State Government are allowed to the extent indicated in this order and the common interim order dated 23.3.2007 in W.P.Nos.5539 of 2007 and batch stands modified pro-tanto.

Having regard to the importance of the matter, these writ petitions shall be listed for hearing subject to part heard before the appropriate Bench on 11.6.2007."

Shri V. Srinivas, learned counsel for the respondent raised an objection to the maintainability of the appeal by arguing that order admitting the review petition cannot be treated as "judgment" within the meaning of Clause 15 of the Letters Patent. He emphasized that even though, while admitting the review petition, the learned Single Judge has adverted to the merits of the case set up by the respondent, the order under challenge cannot be appealed against by invoking Clause 15 of the Letters Patent or Section 104 (2) of the Code of Civil Procedure. In support of his argument, Shri Srinivas

relied on the judgment of the Larger Bench of this Court in **B.F. Pushpaleela Devi v. State of A.P.**[1].

Shri C.V. Mohan Reddy, learned Advocate General relied on the judgment of the Supreme Court in **Shah Babulal Khimji v. Jayaben D. Kania**[2], **Subal Paul v. Malinia Paul**[3], **Liverpool & London S.P. & I. Assn. Ltd. v. M.V. Sea Success I**[4] and argued that the order admitting in the review petition is appealable.

We have thoughtfully considered the arguments of the learned counsel and scanned the record under challenge. In our opinion, the objection raised by the learned counsel for the respondent merits acceptance and the appeal is liable to be dismissed as not maintainable. In **B.F. Pushpaleela Devi v. State of A.P.** (supra), the Bench of five Judges of this Court made a reference to large number of judicial precedents on the subject including the judgment in **Shah Babulal Khimji v. Jayaben D. Kania** (supra) and laid down the following propositions:

"From the above it is clear that in order to treat an "order" as "judgment" within the meaning of the Letters Patent, a controversy must have been decided affecting the valuable rights of the parties and it must contain the traits and trappings of finality.

There cannot be any dispute that against the order of a learned single Judge of the High Court exercising original jurisdiction in a proceeding under Art. 226 of the Constitution of India, an appeal would lie to the Division Bench in terms of clause 15 of the Letters Patent.

A distinction can, however, be maintained between a case where review is sought against the order passed in an interlocutory application and in a case where review is sought against an order passed in an original proceeding. In case where the review is sought against the interlocutory order, a review is permissible under Clause 15 of the Letters Patent, in the light of the Judgment of the Apex Court in **khimji**'s case (supra), only if the

valuable rights of the parties are determined in such an interlocutory order and it had the traits and trappings of a final order. That means the interlocutory order passed by the learned Judge must have determined the rights of the parties which is the subject matter in a main proceeding. Pending the main proceeding if the learned Judge proceeded to determine the valuable rights of the parties in an interlocutory application, which he ought not to, which had in effect amounted to final disposal of the main proceeding itself, then, in such cases, the affected party has a right of appeal against that order under Clause 15 of the Letters Patent as it would be a judgment within the meaning of the said clause.

An order passed in an application for review refusing to review final order passed in a writ proceeding simply confirming the original order by a cryptic order, in our view, is not a "judgment" within the meaning of Clause 15 of the letters Patent. In such cases, we are of the view that the order passed in the review application is nothing but reiterating the earlier final order and it merges with the earlier final order passed in the original proceeding. Therefore, no appeal is maintainable against such order and the only remedy available to the party is to file an appeal against the original order at once, if it is so permissible as per law. However, if the order passed on the review application has re-determined the rights of the parties to the controversy and modified the earlier final order on the basis of any new and important matter or evidence which could not be produced by the applicant or within his knowledge even after the exercise of due diligence at the time when the decree was passed or order made, in our considered opinion, the earlier final order passed in the original proceeding merges with the order passed in the review application and against such modified order passed in a review application if a party is aggrieved, he will have a right of appeal under Clause 15 of the Letters Patent as the same could be construed as "judgment" within the meaning of Clause 15 of the Letters Patent. Even sub-rule (1) of Rule 7 of Order 47 provides that an order granting application may be objected to at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit.

An order, which is appealable under the Code or under any other statute, becomes appealable as the statute confers a right on the litigant to prefer an appeal against such order. Such an order may or may not be appealable as 'judgment' under clause 15 of the Letters Patent. An order

which may be appealable under Clause 15 of the Letters Patent as a 'judgment' becomes appealable as Letters Patent confers on the litigant a right of appeal against such an order of 'judgment'. An order appealable under the Letters Patent may or may not be appealable under the Code. A right of appeal is a creature of statute. A litigant does not have an inherent right to prefer an appeal against an order unless such a right is conferred on the litigant by law. Certain orders become appealable under the Code, as the Code makes such orders appealable. Other statutes may confer a right of appeal in respect of any order under the statute. The Letters Patent by Clause 15 also confers a right to prefer an appeal against a judgment. An order, which satisfies the requirements of judgment within the meaning of Clause 15, becomes appealable under the Letters Patent. What kind of an order will constitute a judgment within the meaning of Clause 15 of the Letters Patent and will become appealable as such must necessarily depend on the facts and circumstances of each case and on the nature and character of the order passed. In our opinion the judgment within the meaning of clause 15 of the Letters Patent would have to satisfy two tests. First, the judgment must be the final pronouncement which puts an end to the proceedings as far as the Court dealing with it is concerned. Secondly, the judgment must involve the determination of some right or liability though it may not be necessary that there must be a decision on merits. The nature of the order will have to be examined in order to ascertain whether there has been a determination of any right or liability. Since there is no definition of the word judgment in the letters patent itself, the expression has necessarily to be construed and interpreted in each case. It is, however, safe to say that if any order has the effect of finally determining any controversy forming the subject-matter of the suit itself or any part thereof or the same affects the question of Court's jurisdiction or the question of limitation, such an order will normally constitute 'judgment' within the meaning of Clause 15 of the Letters Patent. We must not, however, be understood to say that any other kind of order may not become judgment within the meaning of Clause 15 of the Letters Patent to be appealable under the provisions thereof."

Since the learned Single Judge merely admitted the review petition for consideration, the order under challenge cannot, by any

stretch of imagination, be treated as an adjudication of the rights of the parties. Therefore, the same does not fall within the ambit of the term "judgment" appearing in Clause 15 of the Letters Patent.

We have refrained from dealing with the judgments on which reliance has been placed by the learned Advocate General because, objection similar to the one raised on behalf of the respondent did not come up for consideration in any of those cases.

In the result, the appeal is dismissed.

G.S. SINGHVI, CJ

July 31, 2007

C.V. NAGARJUNA REDDY, J

svs

---

[1] 2002 (5) ALD 103 (L.B.)
[2] (1981) 4 SCC 8
[3] (2003) 10 SCC 361
[4] (2004) 9 SCC 512